

April 6, 2011

Comments of the Natural Resources Defense Council
Submitted to the California Department of Water Resources on the
Draft Agricultural Water Measurement Regulation dated March 18, 2011 and the
Draft Cost Analysis for Proposed Agricultural Water Measurement Regulation in Support of
Economic and Fiscal Impact Statement dated March 29, 2011

We strongly object to the adoption of the proposed regulation. NRDC has submitted numerous comments on this proposal to the Department in writing and in person at meetings of the Agricultural Stakeholders Committee and its A2 Subcommittee on Measurement Range of Options. Many of the shortcomings previously identified in these comments have gone unaddressed, particularly the more significant problems with the proposal. At several key junctures, the proposed regulation includes language that is unclear, unenforceable, or an unauthorized departure from the requirements of the Act, or some combination all three.

Most notably, the regulation utterly fails to meet the statutory objectives of ensuring the consistent collection of reasonably accurate farm gate delivery data, for purposes of both the volumetric pricing of water delivered to individual irrigators and the reporting of aggregate data on the volume of water actually delivered to farms. For California's major agricultural water suppliers, farm gate measurement is a requirement of the law, not one compliance option out of many.

The proposed regulation would –

- Broadly exempt federal Central Valley Project contractors from the specific measurement requirements of state law;
- Allow unspecified numbers of irrigators receiving water from large irrigation districts through community ditches to be exempt from farm gate measurement requirements;
- Allow irrigation districts to certify the accuracy of flow rates or water velocities, in place of certifying the accuracy of the volume of water delivered to customers as required by the statute;
- Exempt irrigation districts from farm gate measurement requirements wherever seasonal variations in water orders result in flows that may fall outside the warranted accuracy range of a single measurement device – an exemption intended to provide a broad waiver of farm gate measurement for rice producers;
- Allow for less-than-representative sampling of the accuracy of measurement devices currently installed;
- Require the retention of records to document compliance with some portions, rather than all portions, of the regulation.

We note that the draft Economic and Fiscal Impact document concedes (at p. 13) that fully 50% of covered acreage in the Sacramento Valley will qualify for measurement at the lateral rather than measurement at the farm gate. As made explicit by DWR staff during the public meeting process, the regulation has been drawn to allow farm gate deliveries for rice producers to remain unmeasured. California is the number two rice producing state in the nation, and in 2010, over 550,000 acres of rice were harvested (nearly all from six contiguous counties in the Sacramento Valley), an amount of harvested acreage that was second only to hay among all crops harvested statewide. With an average water duty of over five acre-feet per acre, rice production draws nearly 3 million acre-feet of water per year, a staggering amount roughly equal to the customer demand of five cities the size of Los Angeles. Nothing in the language of the law suggests any legislative intention that such a significant sector of agricultural water use – indeed, such a significant portion of water use statewide – should be broadly exempt from the state’s farm gate measurement requirement.

For these reasons, together with reasons previously stated in writing and in person through the DWR public process, we recommend that the March 18 draft of the proposed regulation be substantially revised before submission to the California Water Commission as a proposed final rule.